



deadline for the submission of such an amendment as a matter of right under Section 73.3522(a)(6) of the Rules.^{2/} ORA's contention that the amendment was not filed until March 10 and was accordingly untimely is simply incorrect.^{3/} As such, ORA's arguments regarding those portions of the application as originally filed that were amended on March 9 should be rejected, having been rendered moot by the amendment. Black Hills Christian Communications, Inc., 6 FCC Rcd 500, 501, n.3 (Mass Media Bur. 1991).

3. The remainder of ORA's Petition is devoted to its argument that, because Ms. Matchak's application, as amended, proposes a transmitter site that is short-spaced with that of Station WTTF-FM, Tiffin, Ohio, the application should be dismissed, notwithstanding Ms. Matchak's specification of a directional antenna and request that her proposal be processed under Section 73.215 of the Rules. ORA maintains that such processing is appropriate only in situations in which a fully-spaced tower site is unavailable or has limited suitability. As was the case with the date of filing of the March 9 amendment, ORA is simply wrong.

4. Section 73.207 of the Commission's Rules, the so-called "short-spacing rule," contains the requirements for minimum distance separation between FM stations. Until 1989, the only way that an application for a new FM facility proposing a station not

^{2/} Without burdening the record in this regard, Ms. Matchak disputes ORA's contention that her application as originally filed was deficient in any respect.

^{3/} The Public Notice announcing the acceptance for filing of the Westerville applications, including that of Ms. Matchak (Report No. NA-156), was released on February 21, 1992.

in compliance with this Rule could be processed was for the applicant to seek and obtain a waiver of the Rule. As noted by ORA, consistent with the Commission's general stringent requirements for any waiver of its rules, an applicant seeking such a waiver is required to demonstrate that no fully-spaced or less short-spaced site for its facility exists. See, Donovan Burke, 104 FCC 2d 843 (1986); Megamedia, 67 FCC 2d 1527 (1978).

5. However, in 1989, the Commission adopted a new rule, Section 73.215, to allow an FM applicant to specify a nominally short-spaced facility without the need to seek a rule waiver. Such an applicant must demonstrate that the service of any short-spaced licensee would be protected from interference. The Commission established that such a showing could be made by the applicant utilizing a directional antenna, by taking advantage of terrain elevation in the direction of the short-spaced facility, by a appropriate reduction in operating facilities (power and/or antenna height) or by any combination of these factors. Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignment by Using Directional Antennas, 4 FCC Rcd 1681 (1989) ("DA Order").

6. In its Petition, ORA mischaracterizes the Commission's DA Order as limiting the application of Section 73.215 to those situations in which a waiver of Section 73.207 is justified: where fully spaced tower sites are unavailable or have limited suitability. Neither the DA Order nor Section 73.215 contains any language supporting this contention. Indeed, under ORA's reading of the DA Order, the Commission's adoption of Section 73.215 would

have been meaningless: the only type of short-spaced applicant allowed to seek processing under that rule would be one already entitled to a waiver of Section 73.207. As the Commission made clear in adopting Section 73.215, the Rule is intended "to afford FM applicants and licensees some greater flexibility in the

requesting processing under Section 73.215 "to save money." However, the Commission specifically adopted Section 73.215 to allow applicants to specify otherwise short-spaced transmitter sites selected for, inter alia, economic reasons. DA Order, at 1681, para. 5.

8. In her March 9 amendment, Ms. Matchak expressly requested processing of her captioned proposal pursuant to Section 73.215. In Exhibit 3 to that filing, she demonstrated that her proposal will fully comply with that Rule, utilizing a directional antenna to prevent prohibited contour overlap with Station WTTF-FM. Notwithstanding ORA's meritless arguments, the application is in complete conformity with the Commission's Rules.⁴

⁴ ORA's citation of language from note 7 of the Commission's 1991 Order increasing the maximum permissible transmitting power for Class A FM stations to 6 kW is similarly off the mark. Note 7 provided a clarification of the new Class A 6 kW rules with regard to Category 2 Class A stations. At paragraph 9 of that Order, the Commission specifically noted, "A third option for Category 2 stations is to apply for a modification pursuant to the contour protection provisions of Section 73.215." Amendment of Part 73 of the Rules to Provide For An Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, 6 FCC Rcd 3417, 3418 (1991). WBBY was such a station. Ms. Matchak's application, which proposes processing under that Rule, is fully consistent with the 1991 Order.

9. In light of the foregoing, ORA's Petition should be denied.

Respectfully submitted,

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March 9, 1992

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Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

Re: Westerville Radio Partners
Westerville, Ohio
File No. 911230MF

Dear Ms. Searcy:

On behalf of our client, Westerville Radio Partners, and in response to the Commission's Public Notice, Report No. 15189, dated February 6, 1992, enclosed please find an original and two (2) copies of a minor amendment to the above-noted application.

Should you have any questions or require additional information concerning the amendment, please contact undersigned counsel.

Sincerely,

CERTIFICATE OF SERVICE

I, Lilly A. Redd, a secretary in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 8th day of April, 1992, had copies of the foregoing "OPPOSITION TO PETITION TO DENY AND DISMISS" mailed by U.S. first class mail, postage prepaid, to the following: